

1 STACEY FULHORST, Executive Director
2 City of San Diego Ethics Commission
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7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2008-63
11)
12 STEPHEN WHITBURN,) **STIPULATION, DECISION, AND**
13) **ORDER**
Respondent.)
_____)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City's Ethics Ordinance.

20 2. At all times mentioned herein, Stephen Whitburn [Whitburn] was a candidate for
21 City Council District 3 in the June 2008 primary election and the November 2008 general
22 election. Whitburn is referred to herein as "Respondent."

23 3. This Stipulation will be submitted for consideration by the Ethics Commission at its
24 next scheduled meeting, and the agreements contained herein are contingent upon the approval
25 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

26 4. This Stipulation resolves all factual and legal issues raised in this matter by the
27 Ethics Commission without the necessity of holding an administrative hearing to determine
28 Respondent's liability.

1 5. Respondent understands and knowingly and voluntarily waives any and all
2 procedural rights under the SDMC, including, but not limited to, a determination of probable
3 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
4 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
5 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
6 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
7 to hold the City of San Diego harmless from any and all claims or damages resulting from the
8 Commission's investigation or this stipulated agreement, or any matter reasonably related
9 thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with
10 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
11 reference to each violation, and an order.

12 6. Respondent acknowledges that this Stipulation is not binding upon any other law
13 enforcement or government agency and does not preclude the Ethics Commission from referring
14 this matter to, cooperating with, or assisting any other law enforcement or government agency
15 with regard to this or any other related matter.

16 7. The parties agree that in the event the Ethics Commission refuses to accept this
17 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
18 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
19 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
20 because of prior consideration of this Stipulation.

21 **Summary of Law and Facts**

22 8. Respondent was a candidate for City Council District 3 in the City of San Diego
23 June 2008 primary election and the November 2008 general election.

24 9. SDMC section 27.3571(b) prohibits candidates for elective City office from directly
25 or indirectly soliciting a campaign contribution from a City employee with the knowledge that
26 the person solicited is a City employee.

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10. During the course of the 2008 primary and general elections, Respondent sent various e-mails to recipients included on a master e-mail list that was compiled by Respondent and his campaign staff. This master list included five current City employees with “sandiego.gov” e-mail addresses. As a result, Respondent sent e-mails to the five current City employees that included solicitations for campaign contributions.

Counts

Count 1 - Violation of SDMC section 27.3571

11. Respondent directly solicited campaign contributions from City employees in violation of SDMC section 27.3571(b) by sending e-mails to five City employees that included a solicitation for campaign contributions. SDMC section 27.3571(c) sets forth an exemption to this prohibition for solicitations “made to a significant segment of the public which may include City employees.” Although the “significant segment” exemption is not intended to apply to situations where a candidate is aware that City employees are receiving solicitations, Respondent believed that the exemption applied to all large-scale solicitations.

Factors in Mitigation

12. Respondent has represented that he has not and will not accept campaign contributions from any City employee who received one of the improper e-mail communications. In so doing, Respondent has ensured that his campaign committee will not obtain any financial benefit from the improper e-mail communications.

13. Respondent cooperated fully with the Commission's investigation.

Conclusion

14. Respondent agrees to implement appropriate controls and adequate supervisory measures to prevent future similar violations of the Ethics Ordinance.

15. Respondent agrees to pay a fine in the amount of \$200 for violating SDMC section 27.3571. This amount must be paid no later than March 4, 2009, by check or money order

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made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED: _____
STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED: _____
STEPHEN WHITBURN, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on March 12, 2009. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$200.

DATED: _____
Guillermo Cabrera, Chair
SAN DIEGO ETHICS COMMISSION